



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Florida Keys National Marine Sanctuary: Establishment of Temporary Special Use Area for Coral Nursery

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notification of extension of temporary special use area.

SUMMARY: On September 6, 2023, the National Oceanic and Atmospheric Administration (NOAA) issued a final temporary rule establishing a special use area of a 0.07 square mile area approximately five miles southeast of the community of Tavernier, on the island of Key Largo, within Federal waters of the Florida Keys National Marine Sanctuary (FKNMS) from September 6, 2023, through November 6, 2023. This document extends the temporary special use area an additional 60 days. The special use area prohibits all entry except for restoration activities under a valid Office of National Marine Sanctuaries (ONMS) permit, continuous transit without interruption, and for law enforcement purposes from November 6, 2023, to January 5, 2024. This temporary extension is necessary to prevent or minimize destruction of, loss of, or injury to sanctuary resources, specifically to facilitate restoration activities to improve or repair living habitats through protecting coral nursery stock at this site from potential impacts caused by anchor damage and/or fishing gear. This extension is necessary to protect the corals in the temporary special use area until all of the corals are moved back to the original in-shore permitted nursery site. This temporary special use area will expire within 120 days from the date it was established.

DATES: The effective period for the temporary rule published September 6, 2023, at 88 FR 60887, is extended. This extension of the final temporary rule is effective November 6, 2023, through January 5, 2024.

ADDRESSES: Sarah Fangman, Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL, 33040, 305-360-2713 phone, or by e-mail at sarah.fangman@noaa.gov.

Additional background materials can be found on the FKNMS website at <https://floridakeys.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Sarah Fangman, Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL, 33040, 305-360-2713 phone, or by e-mail at sarah.fangman@noaa.gov.

SUPPLEMENTARY INFORMATION: On September 6, 2023, NOAA issued a final rule (RIN 0648-BM58) creating a temporary special use area for the purpose of coral restoration located approximately five miles southeast of the community of Tavernier, on the island of Key Largo, within Federal waters of FKNMS, for 60 days, with the possibility of extending an additional 60-days following public notice. [88 FR 60887](#) Section 15 CFR 922.164(e) of the FKNMS regulations allows the ONMS Director to set aside discrete areas of the Sanctuary as special use areas in order to provide for, among other uses, the restoration of degraded or otherwise injured sanctuary resources (15 CFR 922.164(e)(1)(i)). A special use area shall be no larger than the size the ONMS Director deems reasonably necessary to accomplish the applicable objective. No person may enter a special use area except to conduct restoration activities under a valid ONMS permit, for continuous transit without interruption, or for law enforcement purposes. Activities that are currently allowed in the area, including fishing, are prohibited.

This temporary special use area was established to limit the potential for physical impact to a coral nursery that was temporarily relocated to deeper waters to protect the

nursery corals from heat stress caused by the current on-going marine heat wave.

Creation of this temporary special use area limits the potential for physical impact to this sensitive coral nursery stock from anchoring, unintentional fouling of fishing gear, and bottom tending fishing gear including traps. The ONMS Director determined that the size of 0.07 square miles is no larger than the size reasonably necessary to protect the coral nursery stock from physical damage. The original rule established this special area for 60 days, until November 6, 2023, with the possibility of one 60-day extension. NOAA has determined a 60-day extension is necessary to protect the corals in the temporary special use area until all of the corals are moved back to the original in-shore permitted nursery site.

NOAA will continue to provide notice of the location of this area through sanctuary radio announcements, press releases, and with assistance from the U.S. Coast Guard and FKNMS staff. NOAA has requested that the U.S. Coast Guard give an additional notification to vessels, via notice to mariners, to remain in continuous transit through this temporary area through January 5, 2024.

Justification for Emergency Action and Extension

The establishment of the temporary special use area was taken in accordance with 15 CFR 922.165 of the FKNMS regulations (62 FR 32154, June 12, 1997). Section 922.165 provides that, where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, any and all activities are subject to immediate temporary regulation, including prohibition, for up to 60 days, with one 60-day extension. This notification is for one 60-day extension to complete the relocation of the corals from this off-shore temporary special use area back to the original in-shore permitted nursery site.

The final temporary rule was necessitated by the current ongoing marine heat wave that was impacting and likely killing coral reefs in the Florida Keys at an

unprecedented rate and scale. These conditions became unsustainable for coral reef ecosystems, and the coral nursery stock is most at risk because these are located in shallow, nearshore protected environments that heat up much more than offshore locations. There are currently 14 active coral nursery sites throughout the Florida Keys. These nursery sites are strategically located in close proximity to the sites where the nursery coral will be outplanted to promote coral restoration. Active coral restoration in the Florida Keys is necessary to facilitate coral restoration, as in the last 40 years, healthy coral cover in the Florida Keys reefs has declined by more than 90 percent.

During the initial 60-day period of this emergency rule, NOAA and restoration partners identified deep water locations to temporarily relocate coral nursery stock. These deep water locations had temperatures below the bleaching threshold, are not exposed to deleterious levels of Ultraviolet (UV) radiation and experience substantial water movement, all conditions more conducive to coral survival. A portion of the most valuable corals, including representative colonies of each species of boulder and branching corals, samples of elkhorn coral, staghorn coral, star corals (*Orbicella spp.*), pillar corals and cactus coral listed under the Endangered Species Act, as well as multiple representative genotypes of these corals to ensure we protect the genetic diversity of these species, were relocated to deeper water sites within FKNMS Federal waters. Temperature meters at these deep sites have consistently shown readings below the bleaching threshold of 30.5°C.

This extension of NOAA's emergency action maintains the offshore temporary special use area to continue to limit the potential for physical impact to this sensitive coral nursery stock while it is being fully relocated back to the original inshore permitted nursery site. These sensitive corals are being grown to support critical sanctuary restoration efforts and could be impacted from anchoring, unintentional fouling of fishing gear, and bottom tending fishing gear including traps. The protections afforded by

maintaining this special use area need to be in place to avoid further damage to these sensitive nursery corals that have already experienced impact from heat stress. As such, a 60-day extension of this special use area is necessary to prevent or minimize the destruction of, loss of, or injury to Sanctuary resources.

Emergency Measures

The 60-day extension of this final temporary rule continues the applicability of one special use area, approximately 0.07 square miles in size, into which all entry will be prohibited except for conducting restoration activities under a valid ONMS permit, continuous transit without interruption, and law enforcement purposes. This special use area was created and to be effective for 60 days from September 6, 2023, until November 6, 2023. This action extends the temporary special use area for an additional 60 days, until January 5, 2024.

The coordinates for this temporary special use area are included in appendix VI to subpart P of part 922 and in the September 6, 2023, *Federal Register* rule (88 FR 60887).

Location and Boundary

Effective from September 6, 2023, through January 5, 2024, all entry except for conducting restoration activities under a valid ONMS permit, continuous transit without interruption, and law enforcement purposes is prohibited within this temporary special use area which is approximately five miles southeast of the community of Tavernier, on the island of Key Largo. The boundary for the special use area begins at Point 1 in the coordinates in appendix VI to subpart P of part 922 and continues to each subsequent point in numerical order ending at Point 5. (Coordinates are unprojected (Geographic) and based on the North American Datum of 1983).

Penalties

Pursuant to 16 U.S.C. 1437(d)(1) and 15 CFR 922.8(a), any person who violates this rule is subject to a civil penalty. The maximum civil monetary penalty authorized

under the National Marine Sanctuaries Act (NMSA) has been adjusted for inflation over time and is currently \$210,161 per violation per day. *See* 15 CFR 6.3(f)(13). Furthermore, NMSA also authorizes a proceeding in rem against any vessel used in violation of this regulation. *See* 16 U.S.C. 1437(d)(3).

Classification

A. National Marine Sanctuaries Act

This action is issued pursuant to the National Marine Sanctuaries Act, 16 USC 1431 et seq. and implementing regulations at 15 CFR part 922. This action is being taken pursuant to the emergency provision of the Florida Keys National Marine Sanctuary regulations at 15 CFR 922.164(e) and 922.165.

B. Administrative Procedure Act

In the final temporary rule, 88 FR 60887, the Assistant Administrator of the National Ocean Service, NOAA, found good cause to waive notice and public comment pursuant to 5 U.S.C. 553(b)(3)(B) and make the rule immediately effective under 5 U.S.C. 553(d)(3), as it would be impracticable and contrary to the public interest to delay taking the emergency measure to protect corals that were being relocated due to heat stress to deeper, cooler waters. The final temporary rule authorized one 60-day extension of the special use area, which we hereby invoke in this document.

Authority: 16 U.S.C. 1431 *et seq.*

Nicole R. LeBoeuf,

Assistant Administrator

for Ocean Services and Coastal Zone Management,

National Ocean Service,

National Oceanic and Atmospheric Administration.

